

# Color of Money

## Foundation for Budget Execution

by Colonel David E. Price

No doubt, you have often heard the term “color of money” used to describe the differences between appropriated funds. This is an easy way to describe a complex set of financial laws and regulations. Most people in the Department of Defense are familiar with the phrase; yet, few outside the financial management community know the three basic elements that give appropriated funds their “color.” As a financial manager, you must understand the basic funding rules and be able to articulate them to commanders, acquisition program managers, and other senior decision makers. It would take volumes to address every “tint and shade” of money; however, the basic rules that color public funds are not hard to understand. This article provides a summary of the basic rules that govern the use of public funds.

### Public Law

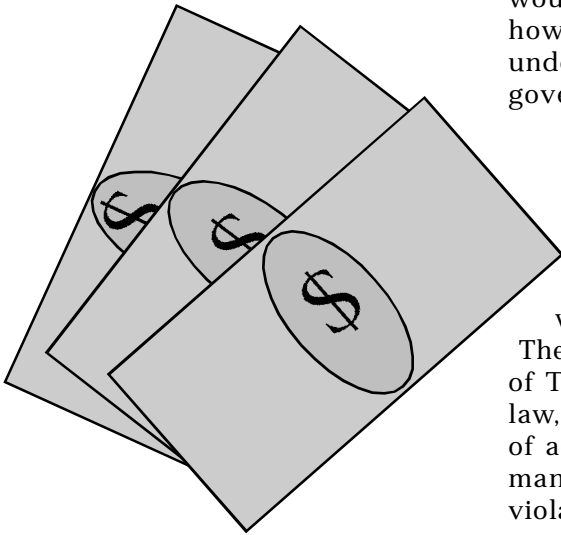
Is the color of money really important? Absolutely! To use more funds than Congress appropriated for a specific purpose and period, or to use funds for purposes other than those for which Congress intended those funds is a violation of public law. The basics of appropriation law are found predominately in sections of Title 31, United States Code (U.S.C.). To prevent violating the law, Federal agencies are required to establish and operate systems of administrative control for appropriated and other government-managed funds which regulate and account for their use. Any violation of the legal restrictions imposed by Title 31 or other statutes must be reported under provisions of DoD FMR 7000.14, Vol 14, and regulations promulgated by the individual military Services that administratively implement required internal fiscal controls. In short, violations of public law are serious. They can result in formal disciplinary action and criminal penalties.

### Basic Rules

When Congress provides public funds to a Federal agency, it also imposes specific limitations on the use of those funds. These restrictions give appropriated funds their color. Color of money is distinguished by purpose, time, and amount. The three rules that state the legal requirements are:

- Propriety of Funding
- Bona Fide Need
- Anti-Deficiency

Propriety of funding relates to purpose. This rule requires that public funds be used only for the specific purposes the Congress



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intended. Title 31, U.S.C., section 1301, states: "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." For example, the use of an Air Force appropriation to buy M-1 tanks would violate the propriety of funding rule unless the Congress had specifically directed the Air Force to use its funds for tank procurement.

The bona fide need rule defines the time restriction. It says that all requirements must be funded with an appropriation enacted for obligation in the fiscal year in which the requirement occurs. This means that appropriated funds can only be obligated for legitimate (i.e., "bona fide") needs of the fiscal year for which the appropriation was made. Therefore, using funds appropriated for FY1998 operations to pay for travel that occurred in FY1997 is a violation of the bona fide need rule.

The anti-deficiency restriction limits the amount available for expenditure. The Anti-Deficiency Act states that the amount appropriated by Congress for any specific purpose and period may not be exceeded. A funding deficiency occurs when the agency obligations exceed the amount Congress appropriated. This rule is straightforward—if you spend more money than Congress allowed for a job, you have committed an anti-deficiency violation.

Before performing any government work, an agency first must have appropriate and sufficient budget authority (BA). To use the BA legally, funds must be from the right Congressional appropriation (i.e., propriety of funding). The correct fiscal year must be cited (i.e., bona fide need rule). And, the funds available must be sufficient to cover the obligation (i.e., anti-deficiency compliance). If any of these conditions are not met, a violation of public law has occurred.

### Creative Financing

The specific rules for each appropriation are different. In fact, in the investment area, they often vary down to the line-item level. As a result, the RDT&E (Research, Development, Test and Evaluation)

Descriptive Summary and P-Series documents submitted to Congress for individual development and procurement programs make a difference on what can and cannot be done with funds from a given appropriated line-item. However, it is a complex business, and there are always "gray areas."

Financial managers who try to stretch the gray areas with "creative financing" are asking for serious trouble. Often the justification for a creative financing scheme is that no regulation specially prohibits the proposed action. While it is true that existing regulations do not provide an all-inclusive list of prohibited actions for each appropriation and line-item, the challenge is to find a cite within a

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budget regulation or Congressional documentation that says your proposed action is appropriate. Saying that the regulation does not prohibit an action may provide some short-term comfort; but, in the long term, it provides absolutely no protection from the penalties that arise from a violation of the law.

Here are some basic rules to help avoid creative financing problems. First, it is inappropriate to use funds from a specific fiscal year solely because “they are the only kind of funds available” or because

“the funds are going to expire.” The first opens the way for a propriety of funding problem; the second, has the potential of violating the bona fide need rule. Other creative financing ideas almost certain to violate the propriety of funding rule when using most types of investment money include the purchase of office plants, janitorial services, flags, facility projects, mail-

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sorting machines, garden mulch, landscaping services, and baseball uniforms. These are all “real world” examples handled by the Comptroller at a single Air Force acquisition center during the past few years. Each came to the attention of the Comptroller, either as a question (e.g., “Can we use RDT&E money for a landscaping contract to improve the area around our building?”), or as an actual purchase request (as in the case of the sports uniforms). Fortunately, none of these creative financing ideas were ever carried out, but they all had the potential to end careers.

Here are more details on two of the examples. In the case of the landscaping contract, RDT&E funds are inappropriate (except at some laboratory and test facilities) unless the program office can cite specific words in the RDT&E Descriptive Summary or another official program document that clearly highlight to Congress, that specific development program funds are to be used for support tasks like landscaping. Without specific Congressional approval the burden of proof falls on the user of the funds (i.e., the propriety of funding rules still apply). Since the installation civil engineer (CE) has Operations and Maintenance (O&M) money which is an appropriate source of funds for such contracts, the solution is to contact the CE office, and make them aware of the landscaping requirement. This does not guarantee that the landscaping project will be funded; however, it does ensure the requirement will be given appropriate consideration by the local Commander. And, if/when the landscaping is done, it will be paid for with the appropriate funds (i.e., O&M).

Sport uniforms are also an inappropriate use of acquisition funds, unless the unit or organization can cite a specific statement from Congressional documentation (e.g., Congressional committee report) that a reasonable person would consider Congressional approval to use specific acquisition funds to purchase sport uniforms. Program funds can be used only if such a statement exists. However, even if this were legal, it would still have trouble passing the “Washington Post Test” (i.e., How would your boss or his/her boss react if he/she read about this in the Washington Post?).

Good financial managers strive to satisfy their customers. This is not easy in an environment of tight resources. It takes strong leadership to get things done. However, bosses who tell their staff, “I don’t care how you pay for this, JUST GET IT!”, are sending the wrong message to their people. To avoid the serious legal trouble that results from misappropriation of public funds, you must deliver the right message. You must insist that everyone in your organization follow funding rules to the letter. When a tough call comes along, pass the question up the comptroller chain before you act. Comptroller policy experts at MAJCOMs or in the Air Force Secretariat budget office can usually help you find an appropriate way to do the job. Remember, the “number one” customer of everyone in government service is the American people. We spend their money, and their representatives in Congress make the rules.

The Air Force financial management community must continue to look for opportunities to reform and streamline its operations. However, this must be done within the limits of the law. To ensure that necessary reform opportunities are identified and pursued without violating any laws, the Assistant Secretary of the Air Force (Financial Management and Comptroller) recently initiated a major Financial

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Management Policies Review. This effort will ultimately help financial managers more effectively support their customers by simplifying internal financial management regulations and clarifying some of the “gray areas” that contribute to “color of money” violations.

### Summary

“Color of Money” is a useful term that allows people to refer to complex set of financial rules with a simple phrase. The legal foundation for the obligation and expenditure of public funds is found in Title 31, U.S.C. Purpose, time, and amount are the three elements that give appropriated funds their color. The basic funding rules that cover these three areas are: “propriety of funding” (purpose), “bona fide need” (time), and “anti-deficiency” (amount). All three rules must be met in order to avoid a violation of the law. Unfortunately, the details of public finance are complex. As a result, many “gray areas” exist. Trying to stretch the gray areas with “creative financing” can result in serious legal trouble. The best way to avoid misappropriation of funds is to follow funding rules to the letter, and work closely with policy experts in the comptroller community. The bottom line for financial managers working budget execution is simple—color of money is important!



## About the Author



Colonel Dave Price is Director, Budget Programs, Deputy Assistant Secretary, Budget (SAF/FMBP). Prior assignments include Air Force Chief of Staff Chair and Professor of Systems Acquisition at the Industrial College of the Armed Forces; Director of Program Control for the Satellite and Launch Control Systems Program Office at the Space and Missile Systems Center; Director of Programs and Budget at the Electronic Systems Center; Comptroller for the US Logistics Group in Turkey; and Assistant Executive Officer for the Comptroller of the Air Force. Col Price has an undergraduate degree from Willamette University and masters degrees from Auburn University and the Industrial College of the Armed Forces. He is also a graduate of the Defense Acquisition University's Senior Acquisition Course, and is certified at Level III in the Air Force's Financial Management Acquisition Professional Development Program. He is a member of the Washington Chapter of the American Society of Military Comptrollers.

